

understand the importance of Ukraine prevailing today.

Our friends and partners in the Middle East know the score as well. They have had to contend with Russia as an influential force in the region ever since President Obama failed to enforce his redline in Syria and Putin came rushing in to that conflict. Now our partners see the same Iranian missiles and UAVs that have struck their own cities being used by Russia to attack Ukraine. They know Moscow will repay Tehran soon somehow and that a victorious Russia will be less constrained in providing advanced capabilities to Iran.

So we have seen senior Israeli officials showing up in Kyiv. We have seen Saudi Arabia vote against Russia in the United Nations, pledge \$400 million in assistance to Ukraine, and send its first official delegation to Kyiv in 30 years.

Clearly, America's friends all around the world know that the way we respond to today's threats will determine our readiness to face tomorrow's. They know it in Europe, they know it in the Indo-Pacific, and they know it in the Middle East.

And, here at home, Republicans know that the safest America is a strong—strong—and engaged America. That is why we will continue to push President Biden and his administration to move faster to exert our leadership, invest in our own defense, equip our friends, and keep America safe.

#### JUDICIAL NOMINATIONS

Mr. President, now, on another matter, the quality of President Biden's judicial nominees has been in the headlines recently—for all the wrong reasons. Recently, the White House celebrated their 100th judicial confirmation with a bizarre press release that spent less than one sentence talking about legal qualifications before devoting five paragraphs to the nominees' demographics.

Then, a newly published analysis pointed out that the nominees whom Democrats have been confirming have been significantly less likely to have clerked at the Supreme Court, clerked at a circuit court, or graduated law school with top academic honors compared to the judges that Republicans spent the previous 4 years confirming—fewer prestigious clerkships, fewer academic honors.

Not terribly surprising, it appears this qualifications gap may also be leading to a job performance gap. A law professor at the University of Iowa has found that the first 10 Biden-appointed appellate judges have written about 140 majority opinions between them, or an average of about 14 opinions each.

By contrast, the first 12 appellate judges confirmed during the previous administration had written 415 majority opinions—that is 140 for the Biden nominees and 415 for the previous administration's appointees—by February 2019, or 34 each, over a comparable period of time—14 opinions

each for the Biden first 10, and 34 for the previous administration's first 10.

It appears President Biden's Court of Appeals judges are publishing opinions . . . less frequently than other recent judges.

So tomorrow, our colleagues on the Judiciary Committee will meet for a markup to consider a slate of nominees, including the now-infamous nominee from Washington State who was actually unable to recall what article V or article II of the U.S. Constitution were about. This is not exactly the bar exam; this is basic constitutional literacy. And this person on whom President Biden wants to bestow a lifetime appointment flunked.

Democrats are also trying to push forward the nomination of Michael Delaney, an attorney from New Hampshire who threatened a teenage Jane Doe victim of sexual assault that he would fight to strip away her anonymity and make her name a national story if she and her family did not settle their civil suit against the powerful prep school before it went to trial. Even some of our Democratic colleagues seem troubled by this. Senator BLUMENTHAL says he "has concerns" about this nominee. Chairman DURBIN admitted Delaney had "a rough hearing." Senator FEINSTEIN sent this nominee from her own party's White House a long list of detailed written questions.

This is the caliber of judicial nominees this administration is sending to the Senate—folks who couldn't pass a high school civics exam on the Constitution and folks who threaten a high school girl when she demands accountability for being attacked.

By the way, this brave young lady is outraged that President Biden is trying to reward her legal tormentor with a lifetime appointment and that our two Democratic colleagues from New Hampshire are actually backing this person. She just explained in a courageous op-ed for the Boston Globe how she received rape threats and death threats; how photos of her and her sisters were uploaded to hateful websites; how people took out inappropriate classified ads using her family's information—all because she dared to speak out and seek justice for what she had suffered.

This young lady wrote:

Biden's nomination as well as the nominee's support from Senators . . . Shaheen and . . . Hassan of New Hampshire show me and other survivors that they approve of what Delaney and St. Paul's School put me and my family through. . . . Michael Delaney's nomination must be withdrawn.

That is from the victim.

The American people deserve the best and brightest. It appears the Democrats are producing something else.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

#### RUPERT MURDOCH

Mr. SCHUMER. Mr. President, on Monday evening, reports came out that Rupert Murdoch, owner of FOX News, acknowledged in a deposition that hosts of the network promoted the false narrative that Donald Trump won the 2020 election.

Asked if he could have stepped in to prevent this, Mr. Murdoch acknowledged that he could have but chose not to—he could have stepped in but chose not to—and expressed regret for not doing so.

To this day, several FOX News hosts continue promoting the Big Lie. They keep spreading the Big Lie despite mounting evidence that, behind the scenes, many top hosts and executives at FOX have recognized that the stolen election narrative is entirely bogus. Nevertheless, they continue broadcasting it all the time.

This morning, Leader JEFFRIES and I wrote a letter to Mr. Murdoch demanding that he do what he should have done a long time ago: Order Tucker Carlson and other hosts on FOX News to stop spreading lies about the election. They need to stop giving a platform to dangerous and entirely unfounded conspiracy theories that eat at the wellspring of our democracy, and they need to admit on the air that they were wrong to engage in such negligent and destructive behavior.

Sadly, too much damage has already been done to our democracy. A significant segment of voters—by some measures, as much as 30 percent of the electorate—still do not believe that the 2020 election was legitimate. What FOX News hosts have done is flat-out dangerous—dangerous. When people doubt that elections are on the level, that is the beginning of the end of this wonderful democracy because elections are our wellspring. They are the core of what the Founding Fathers set up. It was the great novelty of the Constitution that has spread around the world.

When conspiracy theories like the Big Lie are allowed to grow, violence can ensue, as we all saw for ourselves on January 6.

Mr. Murdoch's testimony is all the more alarming after Speaker MCCARTHY is reportedly allowing Tucker Carlson to review highly sensitive security camera footage of the events surrounding the violent January 6 insurrection. Sharing that footage is a grave mistake that risks emboldening the supporters of the Big Lie.

Mr. Murdoch, FOX News executives, and hosts all have a choice—a very important choice: They can continue broadcasting lies about our elections and further erode trust in our democracy or they can admit their mistake, start telling the truth, and move beyond this shameful chapter in their company's history by coming clean with their viewers and with the American people. We hope Mr. Murdoch

heeds our call. The survival of our democracy is too important.

#### RAILWAY SAFETY ACT OF 2023

Mr. President, on the new bipartisan bill, later today, a bipartisan group of Senators, including Senators BROWN and VANCE of Ohio and FETTERMAN and CASEY of Pennsylvania—a bipartisan group—plan to introduce the Railway Safety Act of 2023.

In the aftermath of the terrible accident in East Palestine, this is precisely the kind of proposal we need to see in Congress—a bipartisan rail safety bill, one that includes provisions relevant to the accident that happened a month ago.

I salute them for this fine bipartisan effort and commit to them that I am going to work with the sponsors of the bill to move this bill forward. We should pass it—a bipartisan bill—here in the Senate and hopefully in the House. I will do whatever I can to make sure that happens.

The bill is as smart as it is necessary. It includes provisions to increase safety protocols for trains with hazardous materials, new requirements for crews operating trains, and increases the fines that can be imposed on rail companies that engage in reckless behavior.

We must do more because an accident like the one in East Palestine didn't come out of the blue. On the contrary, the Chair of the NTSB said the Norfolk Southern derailment was 100 percent preventable. The fault here lies with rail companies that spent years lobbying to slash crucial safety regulations intended to keep people safe. It has created a dangerous culture where the profit motive is king above all others, even above the need to keep people safe.

There are countless small towns just like East Palestine across America with rail lines running through them. In my dear State of New York, there are lots of them, particularly in Upstate. They are all at greater risk when rail giants work together to slash safety, slash worker compensation, and place shareholder returns above everything else.

#### DEPARTMENT OF LABOR RULE REPEAL

Now on ESG, later today, my Republican colleagues will force a vote here on the floor to reverse a Labor Department rule allowing retirement fiduciaries to use ESG, if they so wish, when evaluating investments.

I will strongly oppose this ill-considered proposal. My reasons, which I will outline in a minute, are also outlined in an op-ed in the Wall Street Journal editorial page today.

Mr. President, I ask unanimous consent to have printed in the RECORD an op-ed from the Wall Street Journal editorial page.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal Feb. 28, 2023]

#### REPUBLICANS OUGHT TO BE ALL FOR ESG

(By Charles E. Schumer)

Investing in a free-market economy involves choice. There are 8,000 securities listed on U.S. stock exchanges alone. Investors take many different factors into account when evaluating their investment decisions. Three such factors—environmental, social and governance, also known as ESG—have recently gotten a lot of attention from some more conservative Republicans, including Florida Governor Ron DeSantis.

In the House, Republicans just passed a bill that would reverse a Labor Department rule recognizing that retirement fiduciaries may use ESG when evaluating investments. That bill will soon come before the Senate. I will strongly oppose this ill-considered proposal.

ESG opponents are trying to turn it into a dirty acronym, deploying attacks they have long used for elements of a so-called woke agenda. They call ESG wokeness. They call it a cult. They call it an incursion into free markets. We've heard it all before. I say ESG is just common sense.

Republicans conveniently ignore something very important: America's most successful asset managers and financial institutions have used ESG factors to minimize risk and maximize their clients' returns. In fact, according to McKinsey, more than 90% of S&P 500 companies publish ESG reports today.

This isn't about ideological preference. Investors and asset managers increasingly recognize that maximizing returns requires looking at the full range of risks to any investment—including the financial risks presented by increasingly volatile natural disasters, aging populations and other threats that the public doesn't normally associate with financial modeling.

Nothing in the Labor Department rule imposes a mandate. It simply states that if fiduciaries wish to consider ESG factors—and if their methods are shown to be prudent—they are free to do so. Nothing more, nothing less.

The present rule gives investment managers an option. The Republican rule, on the other hand, ties investors' hands.

Sen. Rick Scott asserted that the Labor Department rule "allows Wall Street fund managers to make choices on behalf of Americans based on their own beliefs and social agenda." Yet his Republican colleagues have introduced bills requiring fiduciaries to consider factors that don't strictly relate to financial returns, including whether a particular investment has ties to Russia or the Chinese Communist Party.

For some Republicans, these are all perfectly fine extra-financial considerations. But when it comes to investing in workers, or hedging against the dangers of a changing climate, or guarding against risks of corporate malfeasance—suddenly that's a bridge too far. You can't have it both ways.

Republicans talk about their love of the free market, small government and letting the private sector do its work. But their obsession with eliminating ESG would do the opposite, forcing their own views down the throats of every company and investor. Republicans would prevent investors from adapting to the future, for their own good and the good of the country.

I say let the market work. If that naturally leads to consideration of ESG factors, then Republicans should practice what they've long preached and get out of the way.

Mr. SCHUMER. Republicans have been trying mightily to turn ESG into their newest dirty little acronym. They

are using the same tired attacks we have heard for a while now—that this is more wokeness, that it is intrusion into the markets, and on and on and on.

But Republicans are missing or ignoring an important point: Nothing in the DOL rule imposes a mandate.

Again, let me repeat that: Nothing in the rule they seek to undo imposes a mandate.

It merely says that if fiduciaries wish to look at ESG factors and if their methods are shown to be prudent—it is a very narrow rule—then they have the freedom to do so—the freedom to do so. It is literally allowing the free market to do its work.

This isn't about ideological preference. It is about looking at the biggest picture possible for investors to minimize risk and maximize returns.

Why shouldn't you look at the risks posed by increasingly volatile climate incidents? Why shouldn't they consider aging populations or other trends that could impact their portfolio?

In fact, more than 90 percent of S&P 500 companies already publish ESG reports today.

The present rule gives investment managers an option. The Republican rule, on the other hand, ties investors' hands—no freedom for companies to choose what they think is right.

Republicans talk about their love of the free market, small government, "let the private sector do its work," but their obsession with eliminating ESG would do the opposite, forcing their own views down the throats of every company and every investor.

I say: Let the market work. Let the market work. Mr. and Mrs. Free Market Republicans, what the heck are you doing here? Imposing your views on these companies?

If the market naturally leads to the consideration of ESG factors, then Republicans should practice what they have long preached and get out of the way.

#### AUTHORIZATIONS FOR USE OF MILITARY FORCE

AUMF—we have a lot to talk about today, and there are a lot of very important issues before us. I want to offer a brief but heartfelt thanks to Chairman MENENDEZ and Ranking Member RISCH, as well as Senators Kaine and Young, who have worked so diligently for this proposal for so long, for reaching an agreement to mark up next week a long-awaited measure that many of us have waited for: a repeal of the Iraq AUMF.

I am glad that this effort has been, for the most part, bipartisan and bicameral. It was bipartisan and bicameral under full Republican control of government, under full Democratic control of government. And it is now every bit bipartisan under divided government. It is staying bipartisan. There is support on both sides of the aisle for this proposal.

Because both Democrats and Republicans have come to the same conclusion, we need to put the Iraq war